

AMENDED IN ASSEMBLY SEPTEMBER 2, 2005

AMENDED IN ASSEMBLY AUGUST 31, 2005

AMENDED IN ASSEMBLY JULY 6, 2005

AMENDED IN ASSEMBLY JUNE 23, 2005

AMENDED IN SENATE APRIL 12, 2005

AMENDED IN SENATE MARCH 14, 2005

SENATE BILL

No. 61

Introduced by Senator Battin

(Principal coauthor: Assembly Member Jones)

January 14, 2005

An act to amend Section 1357.120 of, to amend the heading of Article 2 (commencing with Section 1363.05) of Chapter 4 of Title 6 of Part 4 of Division 2 of, and to add Sections 1363.03, 1363.04, and 1363.09 to, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 61, as amended, Battin. Common interest developments: elections.

Existing law creates and regulates common interest developments and requires them to have a recorded declaration containing specified information and permits them to levy assessments. Existing law establishes, in certain situations, voting requirements for amendments of the declaration and the levy of assessments. Existing law establishes the Common Interest Development Open Meeting Act. Existing law requires that a common interest development be managed by an association. Existing law regulates a broad range of activities associated with statewide, local, and special elections.

This bill would require that an association adopt rules, pursuant to specified procedures, to provide equal access to various association media as part of election campaigns, as specified, and to establish qualifications for candidates and voting, as specified, among other things. The bill would also make a conforming change. The bill would require that elections within a common interest development regarding assessments, selection of members of the association board of directors, amendments to the governing documents, or the grant of exclusive use of common area property be held by secret ballot, as specified. The bill would require that a common interest development select an independent 3rd party, as specified, as an inspector of election, who would be granted specified powers, for these elections. The bill would require that ballots and two preaddressed envelopes with instructions on how to return ballots be mailed to each member at least 30 days prior to the deadline for voting, be handled in a specified manner, and that votes be counted and tabulated by the inspector in public at a noticed meeting. The bill would establish additional procedures for storage and review of election results. The bill would prohibit association funds from being spent for campaign purposes, as specified, in connection with an association board election or in connection with any other association election, except as specified. The bill would permit a member of an association to bring a civil action, as specified, for violations of these provisions, and other provisions regarding open meetings, by his or her association, and would impose a civil penalty of up to \$500 per violation.

The provisions of this bill would be operative July 1, 2006, and would become operative only if AB 1098 is enacted and becomes effective, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1357.120 of the Civil Code is amended
- 2 to read:
- 3 1357.120. (a) Sections 1357.130 and 1357.140 only apply to
- 4 an operating rule that relates to one or more of the following
- 5 subjects:
- 6 (1) Use of the common area or of an exclusive use common
- 7 area.

1 (2) Use of a separate interest, including any aesthetic or
2 architectural standards that govern alteration of a separate
3 interest.

4 (3) Member discipline, including any schedule of monetary
5 penalties for violation of the governing documents and any
6 procedure for the imposition of penalties.

7 (4) Any standards for delinquent assessment payment plans.

8 (5) Any procedures adopted by the association for resolution
9 of disputes.

10 (6) Any procedures for reviewing and approving or
11 disapproving a proposed physical change to a member's separate
12 interest or to the common area.

13 (7) ~~Any procedures~~ *Procedures* for elections.

14 (b) Sections 1357.130 and 1357.140 do not apply to the
15 following actions by the board of directors of an association:

16 (1) A decision regarding maintenance of the common area.

17 (2) A decision on a specific matter that is not intended to apply
18 generally.

19 (3) A decision setting the amount of a regular or special
20 assessment.

21 (4) A rule change that is required by law, if the board of
22 directors has no discretion as to the substantive effect of the rule
23 change.

24 (5) Issuance of a document that merely repeats existing law or
25 the governing documents.

26 SEC. 2. The heading of Article 2 (commencing with Section
27 1363.05) of Chapter 4 of Title 6 of Part 4 of Division 2 of the
28 Civil Code is amended to read:

29
30 Article 2. Elections and Meetings
31

32 SEC. 3. Section 1363.03 is added to Article 2 (commencing
33 with Section 1363.05) of Chapter 4 of Title 6 of Part 4 of
34 Division 2 of the Civil Code, to read:

35 1363.03. (a) An association shall adopt rules, in accordance
36 with the procedures prescribed by Article 4 (commencing with
37 Section 1357.100) of Chapter 2, that do all of the following:

38 (1) Ensure that if any candidate or member advocating a point
39 of view is provided access to association media, newsletters, or
40 Internet Web sites during a campaign, for purposes that are

1 reasonably related to that election, equal access shall be provided
2 to all candidates and members advocating a point of view,
3 including those not endorsed by the board, for purposes that are
4 reasonably related to the election. The association shall not edit
5 or redact any content from these communications, but may
6 include a statement specifying that the candidate or member, and
7 not the association, is responsible for that content.

8 (2) Ensure access to the common area meeting space, if any
9 exists, during a campaign, at no cost, to all candidates, including
10 those who are not incumbents, and to all members advocating a
11 point of view, including those not endorsed by the board, for
12 purposes reasonably related to the election.

13 (3) Specify the qualifications for candidates for the board of
14 directors and any other elected position, and procedures for the
15 nomination of candidates. A nomination or election procedure
16 shall not be deemed reasonable if it disallows any member of the
17 association from nominating himself or herself for election to the
18 board of directors.

19 (4) Specify the qualifications for voting, the voting power of
20 each membership, the authenticity, validity, and effect of proxies,
21 and the voting period for elections, including the times at which
22 polls will open and close.

23 (5) Specify a method of selecting one or three independent
24 third parties as inspector, or inspectors, of election utilizing one
25 of the following methods:

26 ~~(A) The board may appoint an inspector or inspectors of~~
27 ~~election.~~

28 ~~(B) The association may adopt procedures in an open meeting~~
29 ~~for selecting an inspector or inspectors of election.~~

30 ~~(C) The association may require that the inspector or~~
31 ~~inspectors be elected by the members of the association.~~

32 *(A) Appointment of the inspector or inspectors by the board.*

33 *(B) Election of the inspector or inspectors by the members of*
34 *the association.*

35 *(C) Any other method for selecting the inspector or inspectors.*

36 (b) Notwithstanding any other law or provision of the
37 governing documents, an election within a common interest
38 development regarding assessments, selection of members of the
39 association board of directors, amendments to the governing
40 documents, or the grant of exclusive use of common area

property pursuant to ~~subdivision (d)~~ of Section 1363.07 shall be held by secret ballot in accordance with the procedures set forth in this section.

(c) (1) The association shall select an independent third party or parties as an inspector of election. The number of inspectors of election shall be one or three.

(2) For the purposes of this section, an independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a member of the association, but may not be a member of the board of directors or a candidate for the board of directors or related to a member of the board of directors or a candidate for the board of directors. An independent third party may not be a person who is currently employed or under contract to the association for any compensable services ~~unless either (A) expressly authorized by rules of the association adopted pursuant to paragraph (5) of subdivision (a), or (B) the inspector is elected by the members of the association.~~ *expressly authorized by rules of the association adopted pursuant to paragraph (5) of subdivision (a).*

(3) The inspector or inspectors of election shall do all of the following:

(A) Determine the number of memberships entitled to vote and the voting power of each.

(B) Determine the authenticity, validity, and effect of proxies, if any.

(C) Receive ballots.

(D) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.

(E) Count and tabulate all votes.

(F) Determine when the polls shall close.

(G) Determine the result of the election.

(H) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this section and all applicable rules of the association regarding the conduct of the election that are not in conflict with this section.

(4) An inspector of election shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical. If there are three inspectors of

1 election, the decision or act of a majority shall be effective in all
2 respects as the decision or act of all. Any report made by the
3 inspector or inspectors of election is prima facie evidence of the
4 facts stated in the report.

5 (d) Any instruction given in a proxy issued for an election that
6 directs the manner in which the proxy holder is to cast the vote
7 shall be set forth on a separate page of the proxy that can be
8 detached and given to the proxy holder to retain. The proxy
9 holder shall cast the member's vote by secret ballot.

10 (e) Ballots and two preaddressed envelopes with instructions
11 on how to return ballots shall be mailed by first-class mail or
12 delivered by the association to every member not less than 30
13 days prior to the deadline for voting. In order to preserve
14 confidentiality, a voter may not be identified by name, address,
15 or lot, parcel, or unit number on the ballot. The association shall
16 use as a model those procedures used by California counties for
17 ensuring confidentiality of voter absentee ballots, including all of
18 the following:

19 (1) The ballot itself is not signed by the voter, but is inserted
20 into an envelope that is sealed. This envelope is inserted into a
21 second envelope that is sealed. In the upper left hand corner of
22 the second envelope, the voter prints and signs his or her name,
23 address, and lot, or parcel, or unit number that entitles him or her
24 to vote.

25 (2) The second envelope is addressed to the inspector or
26 inspectors of election, who will be tallying the votes. The
27 envelope may be mailed or delivered by hand to a location
28 specified by the inspector or inspectors of election. The member
29 may request a receipt for delivery.

30 (f) All votes shall be counted and tabulated by the inspector or
31 inspectors of election in public at a properly noticed open
32 meeting of the board of directors or members. Any candidate or
33 other member of the association may witness the counting and
34 tabulation of the votes. No person, including a member of the
35 association or an employee of the management company, shall
36 open or otherwise review any ballot prior to the time and place at
37 which the ballots are counted and tabulated.

38 (g) The results of the election shall be promptly reported to the
39 board of directors of the association and shall be recorded in the
40 minutes of the next meeting of the board of directors and shall be

1 available for review by members of the association. Within 15
2 days of the election, the board shall publicize the results of the
3 election in a communication directed to all members.

4 (h) The sealed ballots at all times shall be in the custody of
5 the inspector or inspectors of election or at a location designated
6 by the inspector or inspectors until after the tabulation of the
7 vote, at which time custody shall be transferred to the
8 association.

9 (i) After tabulation, election ballots shall be stored by the
10 association in a secure place for no less than one year after the
11 date of the election. In the event of a recount or other challenge
12 to the election process, the association shall, upon written
13 request, make the ballots available for inspection and review by
14 association members or their authorized representatives. Any
15 recount shall be conducted in a manner that shall preserve the
16 confidentiality of the vote.

17 (j) The provisions of this section apply to both incorporated
18 and unincorporated associations, notwithstanding any contrary
19 provision of the governing documents.

20 SEC. 4. Section 1363.04 is added to Article 2 (commencing
21 with Section ~~1363.04~~ 1363.05 of Chapter 4 of Title 6 of Part 4 of
22 Division 2 of the Civil Code, to read:

23 1363.04. (a) Association funds shall not be used for
24 campaign purposes in connection with any association board
25 election. Funds of the association shall not be used for campaign
26 purposes in connection with any other association election except
27 to the extent necessary to comply with duties of the association
28 imposed by law.

29 (b) For the purposes of this section “campaign purposes”
30 include, but are not limited to, the following:

31 (1) Expressly advocating the election or defeat or any
32 candidate that is on the association election ballot.

33 (2) Including the photograph or prominently featuring the
34 name of any candidate on a communication from the association
35 or its board, excepting the ballot and ballot materials, within 30
36 days of an election, provided that this is not a campaign purpose
37 if the communication is one for which subdivision (a) of Section
38 1363.03 requires that equal access be provided to another
39 candidate or advocate.

1 SEC. 5. Section 1363.09 is added to Article 2 (commencing
2 with Section 1363.05) of Chapter 4 of Title 6 of Part 4 of
3 Division 2 of the Civil Code, to read:

4 1363.09. (a) A member of an association may bring a civil
5 action for declaratory or equitable relief for a violation of this
6 article by an association of which he or she is a member,
7 including, but not limited to, injunctive relief, restitution, or a
8 combination thereof, within one year of the date the cause of
9 action accrues. Upon a finding that the election procedures of this
10 article, or the adoption of and adherence to rules provided by
11 Article 4 (commencing with Section 1357.100) of Chapter 2,
12 were not followed, a court may void any results of the election.

13 (b) A member who prevails in a civil action to enforce his or
14 her rights pursuant to this article shall be entitled to reasonable
15 attorney's fees and court costs, and the court may impose a civil
16 penalty of up to five hundred dollars (\$500) for each violation,
17 except that each identical violation shall be subject to only one
18 penalty if the violation affects each member of the association
19 equally. A prevailing association shall not recover any costs,
20 unless the court finds the action to be frivolous, unreasonable, or
21 without foundation.

22 (c) A cause of action under Section ~~1363.04~~ 1363.03 with
23 respect to access to association resources by a candidate or
24 member advocating a point of view, the receipt of a ballot by a
25 member, or the counting, tabulation, or reporting of, or access to,
26 ballots for inspection and review after tabulation may be brought
27 in small claims court if the amount of the demand does not
28 exceed the jurisdiction of that court.

29 SEC. 6. This act shall become operative only if Assembly
30 Bill 1098 of the 2005-06 Regular Session is enacted and becomes
31 effective on or before January 1, 2006.

32 SEC. 7. This act shall become operative on July 1, 2006.